

IN THE MATTER OF	:	BEFORE THE
MAIN STREET BUILDERS,	:	HOWARD COUNTY
INC.	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 09-042V

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DECISION AND ORDER

On January 11, 2010, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Main Street Builders, Inc., for a variance to reduce the required 75-foot rear from an arterial or collector public street right-of-way to 35 feet for a proposed single-family detached dwelling in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising, posting and certification requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. Robert Vogel testified on behalf of the Petitioner.

A Preliminary Matter

At the outset of the hearing, the Petitioner introduced an Amended Conditional Use Plan correcting the calculation for determining the 75-foot right-of-way

setback(Petitioner's Exhibit 1). In accordance with Hearing Examiner Rule 9.5, I concluded the amendment is not substantive, and, thus, is unlikely to impact vicinal property owners adversely.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated on the west side of Long Corner Road about 950 feet north of Windsor Forest Road and is also known as 1540 Long Corner Road (the "Property"). The Property is located in the 4th Election District and is identified on Tax Map 6, Grid 10, Parcel 83, Lot 3.

2. The 1.49-acre Property is triangular in shape. Along the northerly, rear hypotenuse, which adjoins a 35-foot wide abandoned right-of-way, are two metal shed buildings, one of which will be removed. The site is encumbered by two easements for the benefit of 1564 Long Corner Road, the property on the south side of the abandoned right-of-way. A long, narrow sewerage easement runs along the rear property line in the Property's back section. Closer to Long Corner Road is a second sewage easement for the same property.

3. Vicinal Properties. All adjoining properties are zoned RC-DEO. The aforementioned southern property is improved by a one-story single-family dwelling and a few accessory buildings sited in the property's rear section. Parcel 276 to the north is improved with a legal, noncomplying single-family detached dwelling located fairly close to Long Corner Road. The western parcel, beyond the abandoned right-of-way is the wooded portion of a 60-acre farm.

4. The Proposal. The Petitioner is requesting a variance from the 75-foot setback from an arterial or collector public street right-of-way for a single-family detached dwelling. Mr. Vogel testified that the Petitioner did not subdivide the Property.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. Pursuant to this section, I may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

Compliance with this first criterion is a two-part test. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the triangular shape of the Property is a unique condition causing the Petitioner practical difficulty in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

The property to the north is located close to Long Corner Road. During my site visit, I observed several additional dwellings sited close to the road. The proposed location of the dwelling will therefore not substantially impair the appropriate use of adjacent properties.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The record indicates the Petitioner did not create the practical difficulty in complying strictly with the setback regulations, in accordance with Section 130.B.2.a(3).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The petition states the dwelling's location is the minimum necessary to accommodate the size and location of the septic fields. The variance is therefore the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 20th Day of January 2010, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Main Street Builders, Inc., for a variance to reduce the required 75-foot rear from an arterial or collector public street right-of-way to 35 feet for a proposed single-family detached dwelling in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures or additions on the Property.
2. The Petitioners shall obtain all necessary permits.
3. The Petitioner shall comply with all agency comments.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed:

1/21/10

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.